

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

KEVIN BRADLEY ANDERSON,

Plaintiff,

v.

MARK NOOTH,

Defendant.

Case No. 2:14-CV-1916-SI

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Stacie Beckerman issued Findings and Recommendation in this case on August 12, 2016. ECF 44. Judge Beckerman recommended that Petitioner Kevin Bradley Anderson's ("Petitioner") Amended Petition for Writ of Habeas Corpus (ECF 28) be denied, a Certificate of Appealability be denied, and this case be dismissed with prejudice.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

Petitioner timely filed an objection. ECF 49. Without further elaboration, Petitioner objected to nearly all of the findings underpinning Judge Beckerman's recommendations. The Court has reviewed *de novo* those portions of Judge Beckerman's Findings and Recommendation to which Petitioner has objected, as well as Defendant Mark Nooth's response to Petitioner's objections (ECF 50). The Court agrees with Judge Beckerman's reasoning regarding this case and ADOPTS those portions of the Findings and Recommendation.

For those portions of a magistrate's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate's recommendations for "clear error on the face of the record."

For those portions of Judge Beckerman's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court ADOPTS Judge Beckerman's Findings and Recommendation, ECF 44. The Court denies Petitioner's Amended Petition for Writ of Habeas Corpus (ECF 28).

The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 1st day of November, 2016.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge